

SECTION XI
LOCAL REGULATION OF EXCAVATION

11.1 AUTHORITY

This Ordinance is enacted pursuant to the authority granted the Town of Hopkinton to regulate earth moving activities within its boundaries under the provisions of Chapter 155-E: 1-11 inclusive, of the N.H. Revised Statutes Annotated.

11.2 PURPOSES

The purposes of this Section is to provide for the control of excavation of sand, gravel, rock, soil or construction aggregate and to provide an orderly procedure for such removal to take place while protecting the health, safety, and general welfare of the community.

11.3 REGULATOR

The Planning Board of the Town of Hopkinton is designated the Regulator as provided in RSA 155-E: 1-11, inclusive.

11.4 DEFINITIONS

Definitions in this section shall mean:

- (a) **“Earth”** means sand, gravel, rock, soil, or construction aggregate.
- (b) **“Excavation”** means a land area which is used, or has been used for the commercial taking of earth, including slopes.
- (c) **“Permit”** means written permission granted by the regulator.
- (d) **“Applicant”** means owner of the excavation site or the owner’s designee.
- (e) **“Owner”** an individual or corporation who claims ownership of the land, containing the excavation site, by virtue of a properly executed deed filed at the Merrimack County Registry of Deeds.

11.5 PERMIT

A permit will be required for the excavation of sand, gravel, rock soil or construction aggregate with the exception of:

- (a) Excavation which is incidental to the lawful construction or alteration of a building or structure or the lawful construction or alteration of a parking lot or way including a driveway on a portion of the premises where removal occurs.
- (b) Excavation which is incidental to agricultural or silvacultural activities, normal landscaping or minor topographical adjustment.
- (c) Excavation from an area contiguous to or from contiguous land in common ownership with, stationary manufacturing and processing plants in operation as of August 24, 1979 from which earth was obtained.
- (d) Excavation from a granite quarry.
- (e) Excavation performed exclusively for the lawful construction, reconstruction or maintenance of a Class I, II, III, IV, or V highway by a unit of government having jurisdiction for the highway or agent of

the unit of government which has a contract for the construction, reconstruction or maintenance of the highway, provided that a copy of the pit agreement executed by the owner, the agent and the government unit shall be filed with and accepted by the Regulator prior to the start of excavation but such excavation shall not be exempt from the provisions of RSA 155-E: 1-11, inclusive.

11.6 APPLICATION FOR PERMIT

Any owner or owner's designee shall, prior to excavation of his/her land, apply to the Regulator for a permit for excavation. The applicant shall also send a copy of the application to the Conservation Commission. Such application shall be signed and dated by the applicant and shall contain at least the following information:

- (a) The name and address of the owner of the land to be excavated, the person who will actually do the excavation and all abutters to the premises on which the excavation is proposed;
- (b) A sketch and description of the location and boundaries of the proposed excavation, the number of acres to be involved in the project and the municipalities and counties in which the project lies;
- (c) A sketch and description of the access and visual barriers to public highways to be utilized in the proposed excavations;
- (d) The breadth, depth and slope of the proposed excavation and the estimated duration of the project;
- (e) The elevation of the highest annual average ground water table within or next to the proposed excavation;
- (f) A plan for the restoration of the area affected by the excavation including a time table therefore as to fully depleted sites within the excavation area during said project. Such plan shall also include:
 - 1. A detailed written explanation of the restoration plan.
 - 2. A diagram, acceptable to the Regulator, showing the restored topography and drainage at the completion of the restoration phase.
 - 3. A written report and diagram explaining the phasing of site restoration showing designated areas and completion dates, if the site is not to be restored all at once.
 - 4. Seeding and mulching specifications.
 - 5. Vegetation suitable to prevent erosion and with soils suitable to sustain such vegetation, except for exposed rock ledge.
 - 6. Debris resulting from the excavation buried or removed.
 - 7. All slopes graded to natural repose for the type of soil of which they are composed.
 - 8. The elimination of any standing bodies of water created in the excavation project as may constitute a hazard to health and safety unless the Regulator specifies different restoration.
 - 9. Such other information as the Regulator may require.

11.7 PROFESSIONAL REVIEW OF PROPOSED EXCAVATION PLANS

The Regulator of the Town of Hopkinton in the interest of the Public Welfare of its citizens institutes the following relative to the professional review of the proposed excavation plans:

- (a) The Regulator may require that excavation proposals be reviewed by outside professionals.
- (b) The decision of whether or not an outside consultant is needed shall be made by the Regulator.
- (c) The Board of Selectmen shall select and contract the consultant to provide the necessary services to the Regulator.
- (d) The applicant for the excavation shall provide the Town with an irrevocable letter of credit, cash or passbook (in the name of the Town) to cover the estimated cost of the service.

- (e) The consultant shall invoice the applicant directly with a copy of the invoice sent to the Board of Selectmen. This invoice shall be paid within thirty (30) days. If not paid, the Board of Selectmen may draw on the security and pay the consultant.
- (f) The applicant shall be responsible for all cost of the professional review. The Board of Selectmen shall be the sole determiner as to whether the charges are reasonable.
- (g) After the review has been completed as determined by the Regulator and all invoices have been paid, the Board of Selectmen shall release the security.

11.8 PROHIBITED PROJECTS

The Regulator shall not grant a permit:

- (a) Where an excavation is proposed below road level within 50 feet of any highway right-of-way unless such excavation is for the purpose of said highway;
- (b) For excavation within 50 feet of a boundary of a disapproving abutter or within 10 feet of the boundary of an approving abutter unless approval is requested by said abutter;
- (c) When the excavation is not permitted by zoning or other applicable ordinance;
- (d) When the issuance of the permit would be unduly hazardous or injurious to the public welfare;
- (e) Where existing visual barriers in the areas specified in APPLICATION FOR PERMIT would be removed, except to provide access to the excavation;
- (f) Where the excavation would substantially damage a known aquifer, so designated by the United States Geological Survey;
- (g) When excavation is planned beneath or adjacent to inland surface waters in such manner that a permit is required from the water supply and pollution control commission, the water resources board, the special board on dredge and fill or other State or federal agencies with jurisdiction over the premises; but the Regulator may approve the application when all necessary permits have been obtained; or
- (h) Where the project cannot comply with the restoration provisions required in Section 11.6.

11.9 RESTORATION

Within 12 months after the expiration date in the permit therefore or the completion of the excavation, whichever first occurs, the owner of the excavated land shall restore, or cause to be restored, the area affected by the excavation to meet minimum conditions set in Section 11.6. Any bond required by the Regulator under Section 11.11 shall not be released until restoration satisfactory to the Regulator has been completed.

11.10 APPLICATION FOR AMENDMENT

When the scope of a project for which an excavation permit has been issued is proposed to be altered so as to affect either the size or location of the excavation, the rate of removal or the plan for restoration, the owner shall submit an application for amendment of his excavation permit which application shall be subject to approval in the same manner as provided for an excavation permit.

11.11 ISSUANCE OF PERMIT

If the Regulator after the public hearing approves the application for a permit and determines it is not prohibited, it shall, upon receipt of an excavation fee not to exceed \$50.00 and the posting of a bond or other such surety with the Board of Selectmen in an amount, as it requires, reasonably sufficient to guarantee compliance with the permit, grant a permit to the applicant for an excavation. A copy of the permit shall be prominently posted at the excavation site or the principal access thereto. A permit shall not be assignable or transferable without the prior written consent of the Regulator. A permit shall specify the date upon which it expires. The Regulator may also include general conditions regulating hours of operation, routes to be utilized, frequency of truck traffic, size and weight of trucks used and any other regulations as may be reasonably necessary to carry out the provisions of RSA 236 155-E: 1-11, inclusive.

11.12 APPEAL

Following the approval or disapproval of an application for an excavation permit, any interested person may appeal to the Regulator for a rehearing within 10 days of the decision appealed from. The Regulator shall either grant or deny the request for a rehearing within 10 days. If granted, the rehearing shall occur within 30 days. Any person affected by the Regulator's decision on a motion for rehearing may appeal in conformity with the provisions in RSA 677:4-15.

11.13 ENFORCEMENT

The Regulator may appoint an Enforcement Officer to enforce the provisions of any permit issued hereunder. Said Enforcement Officer shall have the powers and duties prescribed in RSA 155-E: 1-11, inclusive.